

matter as the method of using the inventive combinations to combat unwanted places is claimed in original claim 7.

The maintenance of the Restriction Requirement is noted as well as the indication that further species would be search provided that the elected composition is found allowable. Applicants continue to traverse the Restriction Requirement for reasons of record.

Claim 10 stands rejected under 35 USC 101. The cancellation of this claim renders this rejection moot.

Claims 2, 3, and 9 stand rejected under 35 USC 112, second paragraph, for allegedly being indefinite. For the reasons that follow, withdrawal of this rejection is requested.

The objection to claim 9 has been corrected. Applicants thank the Examiner for bringing the informality to their attention.

With regard to claim 3, it should be noted that it claims a different structure (X) from those claimed in claim 2 (structures I-IX). Hence, it is urged that there are no inconsistencies. It should be noted that claim 3 depends from claim 1 (not claim 2) and further defines the structure of formula I. Hence, the claim properly depends from claim 1. In view of the foregoing, reconsideration of this rejection is requested.

Claims 1 to 10 stand rejected under 35 USC 103(a) for allegedly being unpatentable over Gienke et al (U.S. 6,239,071) and Hoechst (PCT WO 98/34925). As neither of these patents taken alone or in any fair combination teaches or suggests that herbicidal formulations comprising the inventive combinations would exhibit synergistic activity, reconsideration and withdrawal of this rejection are requested.

This invention provides herbicidal formulations comprising a combination that comprises a synergistically effective amount of components (A) and (B), wherein (A) is one or

more herbicidally active aminotriazine compounds and (B) is one or more herbicides selected from one of four specific groups of herbicides. The synergistic effects are observed when the active compounds (A) and (B) are applied jointly; however, they can also frequently be observed when the active compounds are applied at different times (splitting). It is also possible to apply the herbicides or the herbicide combinations in a plurality of portions (sequential application), for example after pre-emergence applications, followed by post-emergence applications or after early post-emergence applications, followed by medium or late post-emergence applications. The synergistic effects permit a reduction of the application rates of the individual active compounds, a higher place of activity at the same application rate, the control of harmful plants which were as yet uncontrolled (gaps), an extension of the period of application and/or a reduction in the number of individual applications required and - as a result for the user - weed control systems which are more advantageous economically and ecologically. The combinations according to the invention permit, for example, synergistic increases in activity which, in an unexpected manner, exceed the activities that are achieved with the individual active compounds.

The rejection acknowledges that the elected composition is not taught in either of the prior patents. Hence, the inventive combinations are novel. However, the rejection concludes that the elected composition is *prima facie* obvious because it would be well within the skill level of the practitioner "to combine two compositions each of which is taught in the prior art to be useful for the same purpose in order to form a third composition that is to be used for the same very purpose; the idea of combining them flows logically from their having been individually taught in the prior art." Office Action at 4. Applicants respectfully disagree because there is no suggestion in either of these prior publications that indicates that the claimed combination would result in a formulation that exhibits synergy. From reading these references,

the practitioner would merely expect that one would achieve an additive effect of the two single active herbicides.

Applicants respectfully disagree with the allegation in the rejection that they have not provided test data for the elected combination of compound (A1) and compound (B1.3.3); i.e., the compound of formula (I), in which the triazine ring is substituted with an amino group and a 1-fluoro-1-methyl-ethyl group and in which L-M is 1-cyclobutyl-2-phenyl-ethyl (see formula at page 26 of the WO publication), and fenoxaprop-P-ethyl. Data for the elected combination is provided in Tables 11 and 21 of the specification. While it is true that the combination in Table 11 contains the safener mefenpyr-diethyl and the safener isoxadifen-ethyl in Table 21, the presence of the safener does not negate a finding of synergy. The safener is added to safen the crop from phytotoxic effects of the herbicides. The safener is not a herbicide. Hence, the synergy demonstrated by the formulation is do to herbicidal effect of the combination herbicides (A) and (B) on the weeds and not the safener, which is merely an additive. As the claims do not exclude the presence of additives, such as safeners, the comparison is commensurate in scope with the claim.

Moreover, one of ordinary skill in the art would expect that this synergistic effect on the weeds would be obtained also if the safener were not present at all. Support for this position would be the fact that synergy was observed with the two different safeners (see Tables 11 and 21). The herbicidal effect on the weeds thus supports the inventiveness of the herbicide combination A1 + B1.3.3.

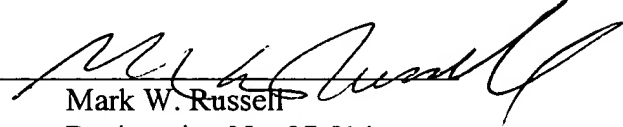
Thus, in view of the foregoing, it is urged that the rejection does not establish a *prima facie* case of obviousness and withdrawal of this rejection is requested.

Favorable action is earnestly solicited.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicant(s)

By



Mark W. Russell
Registration No. 37,514
745 Fifth Avenue
New York, New York 10151
(212) 588-0800

APPENDIX SHOWING AMENDMENTS TO THE CLAIMS

9. (Amended) The method as claimed in claim 7 [6] for the control of harmful plants in cereal.